IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.384 OF 2003

1.M/s.Bamco Tech Pvt. Ltd.)

through its director Shri)

Suresh Kotilal Kankariya)

Age 42 years, Occ. Business,)

R/o.12, Nirmal Chambers,)

Laltaki Road,Ahmednagar-414001)

2.M/s.S.M. Computers Pvt. Ltd.,)

through its director Shri)

Suresh Kotilal Kankariya)

Age 42 years, Occ. Business,)

R/o.12, Nirmal Chambers,)

Laltaki Road,Ahmednagar-414001)..Petitioners

Versus

1.Shri Ramdas Ranoji Bhakre,)

Age 25 years, Occ. Agriculture)

resident of Malwadi, Post)

Takali Haji, Taluka Shirur,)

Dist. Pune.)

2.M/s.Pronet System)

through its sole Proprietor)

Shri Ulhas Ramchandra Jagdhane)

Age 38 years, Occ. Business,)

resident of Renuka Chambers,)

Sevedi Road, Ahmednagar.)

3.M/s.M. & B. Services,)

a Partnership firm through)

its Partners:-)

a) Dilip Dadabhau Bagal,)

Age 36 years, Occ.Business,)

R/o.Plot No.204, Akanksha)

Appt. Complex, Gaikawad)

Colony, Savedi Road,)

Ahmednagar.)

b) Arjunrao Laxman Bhakare)

Age 60 years, Occ.Business)

r/o.Malwadi, Post Takali)

Haji, Taluka Shirur, Dist.)

Pune.)

4.The Inspecgtor General of)

Registration and Controller of)

Stamps, Maharashtra State,)

Near Council Hall, Near)

Administrative Bldg., Pune-1)

5.The Administrative Officer,)

Jijamata Mahila Sahakari Bank)

Ltd., Pune, having its office)

at Savarkar Udyog Bhavan,)

First Floor, C Block,)

Shivajinagar, Pune-411 005)..Respondents

Mr. A.A.Kumbhakoni, for the Petitioners

Mr. P.S. Dani, for Respondent No.5.

Mr. A.H. Palekar, A.G.P. for Respondent NO.4.

Mr. Subhash Dhange, for Respondent No.3(b).

CORAM: F.I. REBELLO J.

DATE : 10th January, 2005

ORAL JUDGMENT:

. Rule. Heard forthwith.

2. The respondent No.1 has filed the suit being Regular Civil Suit No.495 of 2002 before the Civil Judge, Senior Division, Pune. The Petitioner Nos. 1 and 2 are Defendant No.1 and 2A in that suit. The Respondent Nos.2 and 3 are Defendant Nos. 2(b) and 2(c). The Respondent No.4 is Defendant No.2 and Respondent No.5 is the Defendant No.3. For the sake of description the Respondent No.1 will be described as Guarantor and Respondent No.5 as the Bank. The petitioner Nos. 1 and 2 as also Respondent Nos. 2 and 3 will be described as members of the joint venture.

3. The suit by the guarantor is on the basis that one Dilip Dadabhau Bagal, partner of Defendant No.3 is the principal debtor and he stood as a guarantor for the loan

taken from the bank, respondent NO.5. The reliefs are that Shri Bagal be restrained from selling his share in partnership firm of Defendant No.1C-M/s.M. & B. to Defendant No.1A S.M.Computers or from selling the share in terms of money or not to exchange the shares interse. The further relief was that the Respondent NO.4 herein be restrained from making payment of 3 divisions to Defendant No.1 M/s.Bamco Tech and the said amount may kindly be directed to be deposited with Respondent No.5 bank. There is a further declaration which need not be adverted to. It appears that the Respondent No.1 moved an application for interim relief being Exhibit 5. By order of 2nsd May, 2002 the learned IInd Joint Civil Judge, Senior Division, Pune, was pleased to allow the application and restrained Dilip Bagal not to sell or purchase the share of M. & B Partnership firm in Bamco Tech to one of the partner by name Suresh Kankaria of S.M. Computers till the decision of the suit. The respondent No.4 was directed to deposit the bill amount for the work carried out of Index No.II for Pune Division of Defendant No.1 Bamco Tech Company as per their letter No.Computer/BCT/466/73 dated 22nd October, 2001 with Respondent No.5 bank till the decision of the suit.

That suit came to be withdrawn on 24th May, 2004.

4. An application thereafter came to be filed on behalf of the guarantor that he had not filed any application for withdrawal of the suit and in those circumstances the order allowing the suit to be withdrawn be recalled.

5. During the pendency of the application the guarantor again applied under Section 114 and 151 of the Code of Civil Procedure for relief against the petitioners and other contesting respondents. By the impugned order of 16th December, 2002 the Respondent No.4 herein was directed to deposit the bill amount for the work of Data Entry carried out by the Opponents for Aurangabad, Latur and Nashik Division as per their letter dated 22nd October, 2001 with Respondent No.5 bank.

6. The case of the Petitioners is that the petitioners 1 and 2 and Respondent Nos. 2 and 3 entered into an agreement which was styled as Joint Venture Agreement. The first party to that Agreement is the Petitioner No.1. The petitioner No.2 was described as Party of the IVth Part. The Respondent No.2 was described as Party of the IInd Part and the Respondent NO.3 as Party of the IIIrd Part. In so far as this Agreement is concerned, the party of the IIIrd Part was entitled to only a sum of Rs.25,000/- in terms of Clause 5 of the Agreement.

6. At the hearing of this petition on behalf of the Petitioners, it is contended that the order of the learned Judge is totally without jurisdiction. It is submitted that even assuming that the original plaintiff had stood as guarantor for the principal debtor namely Dilip Bagal for a loan advanced to him by Respondent NO.5 if and at the highest the order to be passed could have been in respect of the amounts which the Respondent No.3 would have received under

the Joint Venture Agreement. The orders of the Court below, therefore, it is submitted, is totally without jurisdiction and consequently liable to be set aside. It is also submitted that some amount had been deposited before this Court and that the Petitioners should be entitled to withdraw the said amount.

7. Though the guarantor, the Respondent NO.1 has been served, none appears for him today. On behalf of the respondent No.5 learned Counsel contends that the order dated 16th December, 2002 was passed during the pendency of the Review Application. The Review Application came to be allowed on 16th December, 2002 whereby the suit which was withdrawn was restored. As the order was during the pendency of the Review Application, it is submitted that the order no longer subsists and consequently the petition as filed would become infructuous. It is submitted that after the restoration of the suit the order of 2nd May, 2002 will be the order which will be in force and that order also provides for deposit. An Appeal lies against the said order and consequently this Court in the exercise of its extra ordinary jurisdiction ought not to grant any relief to the petitioners herein.

8. From the various orders passed, it becomes clear that amounts which the petitioners were entitled to in terms of the Joint Venture Agreement from Respondent NO.4 a part of it was directly to be deposited in this Court pursuant to which the Respondent No.4 has so deposited on 9th April, 2003. The

balance amount has been paid directly to the Petitioners.

9. It is in these circumstances that the Court has to appreciate and consider the arguments advanced on behalf of the parties. It will first be clear that in terms of the Agreement all that the Respondent No.3 was entitled to was a sum of Rs.25,000/-. It was, therefore, beyond the jurisdiction of the trial Court to have granted any relief contrary to the MoU at the instance of the guarantor for the loan advanced by Respondent No.5 which the petitioners nor the Respondent NO.2 or for that matter the Respondent 3(b) were parties. To my mind that order was ex-facie without jurisdiction. During the pendency of this petition that order would no longer survive in view of the fact that the Review Application has been allowed. As the monies have been deposited in this Court pursuant to a petition filed by the petitioners challenging the order dated 2nd May, 2002 it is open to this Court to pass appropriate orders regarding that money.

10. Before passing the order it would be appropriate to consider the contention as advanced on behalf of the Respondent No.5. It is true that once the impugned order no longer survives it is possible to contend that the order dated 2nd May, 2002 would be the order which is in force and which is not the subject matter of the present petition. The fact, however, remains that there are no moneys now with the respondent No.4 and the balance money is in custody of the

Court pursuant to the order passed by it. It is not necessary for the Court to decide whether the petitioners herein can challenge the order dated 2nd May, 2002. It is open for them after taking appropriate legal advise to challenge the said order.

11. The question is whether this Court in the circumstances should allow the money to remain in the custody of this Court pursuant to the order dated 2nd May, 2002. As the order passed at Exhibit 4 is an order without jurisdiction and as the order of deposit was made pursuant to a direction by this Court it will be necessary to order the moneys so deposited to be paid in the hands of the petitioners less a sum of Rs.25,000/- which at the highest could be retained in terms of the Memorandum of Understanding. Considering what is stated above, the following order:-

(i). The petitioners would be entitled to receive the amount deposited less a sum of Rs.25,000/-.

(ii) The sum of Rs.25,000/- to be transferred and credited into the Account of Regular Civil Suit No.495 of 2002 pending before Civil Judge, Senior Division, Pune pending the hearing and final disposal of the said suit.

(iii) Petition stands disposed of accordingly. No order as to costs.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Associate of this Court.

(F.I.REBELLO, J.)